

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA McCOLM,

No. C-02-5810 PJH (JCS)

Plaintiff(s),

v.

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO COMPEL [Docket No. 93]**

SAN FRANCISCO HOUSING
AUTHORITY, ET AL.,

Defendant(s).

Defendant Paula Jones d/b/a A-1 Security ("A-1 Security") filed a motion (the "Motion") seeking further responses to A-1 Security's First Set of Special Interrogatories (the "Interrogatories") and further production of documents pursuant to A-1 Security's First Request for Production of Documents (the "Document Requests") [Docket No. 93].¹ Plaintiff filed an opposition to the Motion; A-1 Security filed a reply.

The Motion came on regularly for hearing on January 26, 2007, before the undersigned. Plaintiff appeared by telephone. Defendant A-1 Security appeared through its counsel, Guy Stilson.

Having heard the arguments of counsel, and good cause appearing, the Court hereby GRANTS IN PART and DENIES IN PART the Motion as follows.

¹ The title in the caption of the Notice of Motion refers only to A-1 Security as the moving party, while the text also refers to Henry Johnson as a moving party. This appears to be an error as Henry Johnson did not propound any of the discovery at issue in this Motion. Henry Johnson, however, is a co-defendant who is also represented by the same law firm as A-1 Security.

1 The Motion can be usefully divided into two parts: Interrogatories and Document Requests.
2 With regard to the Interrogatories, A-1 Security seeks answers to Interrogatory Nos. 1-25. A-1
3 Security also seeks the production of documents in response to its Request Nos. 1-24.

4 INTERROGATORIES

5 In her responses to the Interrogatories, Plaintiff raised several specific objections. It is worth
6 noting that in response to virtually all of these Interrogatories, Plaintiff offered no substantive
7 answer, but rather repeated boilerplate objections.

8 The Court has examined Interrogatory Nos. 1-25 and finds that they are relevant to the
9 claims and defenses raised in this case. In most instances, the Interrogatories are properly-framed
10 contention interrogatories seeking information from Plaintiff on allegations in Plaintiff's First
11 Amended Complaint. The Interrogatories that do not directly seek facts related to a specific
12 allegation of the Complaint seek facts directly related to the causes of action or injuries alleged by
13 Plaintiff in the First Amended Complaint. Accordingly, Plaintiff's objection that the Interrogatories
14 are overbroad or not reasonably calculated to lead to the discovery of admissible evidence is
15 OVERRULED.

16 Plaintiff also object that each of these Interrogatories contain sub-parts and cumulatively the
17 total number of interrogatories therefore exceeds the limit established by Federal Rule of Civil
18 Procedure 33. This objection is OVERRULED. First, the so-called "sub-parts" are not sub-parts at
19 all. Rather, each special interrogatory explains what it means when it requests that Plaintiff "state
20 all facts." Moreover, even if the interrogatories are interpreted as containing sub-parts, the total
21 number of interrogatories propounded is not unreasonable. Plaintiff has filed a lengthy First
22 Amended Complaint with many allegations. Defendants are entitled to seek to learn all of the facts
23 known to Plaintiff that support the allegations in her complaint, her causes of action, and her
24 allegations of injury.

25 Plaintiff also objects that the interrogatories are vague and ambiguous. This objection is
26 OVERRULED. Each interrogatory is quite specific and tailored to the claims raised in this case.

27 Plaintiff raises general assertions in response to every interrogatory of attorney-client
28 privilege, work product, and privacy. She also filed a "privilege log" which does not identify what

1 “privilege” is asserted with respect to the documents listed. Plaintiff has made no showing that any
2 of these privileges or protections are applicable to the information sought, and these objections are
3 **OVERRULED**. Nonetheless, the parties to this action are **ORDERED** to meet and confer on a
4 protective order and propose one to this Court. If Plaintiff’s answers to the interrogatories, or
5 documents she produces, contain private medical information, that information may be designated
6 “confidential” under an appropriate protective order.

7 Plaintiff objects that responding to each interrogatory is burdensome and oppressive because
8 she alleges that Defendants, as “purveyors of all incidents” have equal access to the information.
9 This objection is **OVERRULED**. Defendants are entitled to learn from Plaintiff facts that she knows
10 or has learned that are related to allegations in this lawsuit.

11 Finally, Plaintiff avers with respect to each interrogatory that she conducted a “diligent
12 search for information to which she currently has access, custody and control” and believes she does
13 not have any information except as set forth in documents available to Defendants. This boilerplate
14 response is inadequate and is **OVERRULED**. The interrogatories ask for information on specific
15 incidents alleged by Plaintiff in the First Amended Complaint. First, Plaintiff must respond with
16 information in her possession, even if it comes from documents that she believes are equally
17 available to Defendants. Second, the fact that “discovery and investigation” are ongoing is not a
18 proper objection. Indeed, fact discovery closes momentarily, and Plaintiff’s investigation and
19 discovery should now be complete. If Plaintiff does not provide this information – even if it is
20 “recalled” later – the Court may be called upon to decide whether to forbid Plaintiff from
21 introducing at trial any information she failed to produce in discovery.

22 **DOCUMENT REQUESTS**

23 With respect to Document Request Nos. 1-25, Plaintiff again resorts to boilerplate
24 objections, rather than producing documents.

25 The Court has examined all of the Document Requests and finds that they are narrowly
26 tailored and directly relevant to the allegations in the First Amended Complaint and the claims
27 raised by Plaintiff, as well as her injuries. Plaintiff objects that all of the Document Requests are
28

1 overbroad and are not reasonably calculated to lead to the discovery of admissible evidence. These
2 objections are OVERRULED.

3 Plaintiff also again raises the boilerplate objection that the Document Requests are vague and
4 ambiguous. This objection is OVERRULED. The Document Requests are narrowly tailored to the
5 allegations of the Complaint and to the claims in this action.

6 With respect to each Document Request, Plaintiff again raises the claims of attorney-client
7 privilege, work product, and privacy. There has been no showing that any documents protected by
8 these privileges have been sought. As discussed above, Plaintiff's medical records may be
9 designated confidential.

10 Plaintiff also again makes the boilerplate objection that the Document Requests are
11 burdensome and oppressive, in part because they are equally available to Defendants. First, Plaintiff
12 has made no showing that the documents are equally available to Defendants. Second, in any event,
13 Defendants are entitled to know what documents Plaintiff has that are related to the First Amended
14 Complaint, and to copy those documents. Third, Plaintiff has made no showing of burden,
15 especially in light of the fact that Plaintiff's only duty is to collect documents in her custody or
16 control that are responsive to these requests and make them available for copying by A-1 Security at
17 A-1 Security's own expense.

18 Finally, with respect to every document request, Plaintiff claims that she has "conducted a
19 diligent search of documents to which she has current access, custody, and control," and "believes"
20 she is not in possession of documents responsive to these requests, except for those that are "equally
21 available to Defendant." This response is inadequate. Plaintiff must produce copies of all
22 documents responsive to any of these requests. The response is flawed for another reason: Plaintiff
23 appears to limit her search to documents to which she has "current access" and believes she is not
24 "currently in possession" of responsive documents. It may be that after a diligent search, Plaintiff
25 determines that she has no documents that are responsive to any of the Document Requests. If that
26 is the case, she should state so clearly and without equivocation. However, Plaintiff should
27 understand that if she states in response to a Document Request that she has no such documents, she
28

1 may later be precluded from introducing into evidence any documents in her possession that are
2 responsive to these requests, but were not produced to A-1 Security.

3 **OTHER OBJECTIONS**

4 In the opposition to the Motion, Plaintiff raises several objections that are not covered above.

5 First, Plaintiff objects to the Motion because it is brought, in part, by Defendant Henry
6 Johnson, who did not propound any of the discovery at issue in the matter. This objection is
7 OVERRULED. The Motion is also brought by A-1 Security, which did propound the
8 Interrogatories and Document Requests.

9 Plaintiff also objects that the Motion was noticed for hearing in Department A. Plaintiff has
10 made no showing that the Notice is improper in any respect. This matter was referred for discovery
11 to the undersigned and the Motion was properly noticed for the courtroom where the undersigned
12 ordinarily hears motions.

13 Plaintiff also objects to the Motion on the grounds that Defendants failed to meet and confer,
14 as required. This objection is OVERRULED. The record reflects that Defendants attempted to meet
15 and confer, and that no resolution was reached.

16 Finally, Plaintiff argues that Defendants are estopped from complaining about her discovery
17 responses, since they are similar to Defendants' responses. This objection is also OVERRULED.
18 This is not a valid objection. If Plaintiff has legitimate concerns about Defendants' discovery
19 responses, there is a procedure in place to remedy that problem. It is not an excuse to serve
20 improper responses herself. Plaintiff has also made no showing in her papers that Defendants made
21 objections identical to or similar to those made by Plaintiff.

22 **SANCTIONS/CONCLUSION**

23 For all of the foregoing reasons, the Motion is GRANTED IN PART and DENIED IN
24 PART. Within ten (10) calendar days from the date of this Order, Plaintiff is directed to: (1) give
25 full and complete, substantive answers to Interrogatory Nos. 1-25 of A-1 Security's First Set of
26 Special Interrogatories; and (2) produce for inspection and copying all documents in her custody or
27 within her control that are responsive to Document Request Nos. 1-25 of Defendant A-1 Security's
28 First Request for Production of Documents. In the event that Plaintiff has no documents responsive

1 to any particular Document Request, Plaintiff shall serve a response, under oath, stating "Plaintiff
2 has conducted a diligent search and has no documents responsive to Request No. __ in her custody
3 or control."

4 The Motion for Sanctions is DENIED.

5 IT IS SO ORDERED.

6
7 Dated: January 29, 2007


8 JOSEPH C. SPERO
9 United States Magistrate Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28